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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JOE VANG, aka KHOI DANG PHAM,
12
13 vs. Petitioner,
14 UNITED STATES OF AMERICA,
15 Respondent.

CASE NO. 11-CV-02720-LAB/
07cr3041-LAB

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

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17 Vang is currently serving consecutive sentences of 120 months and 60 months for
18 possession of methamphetamine with intent to distribute, in violation of 12 U.S.C. 841(a),
19 and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18
20 U.S.C. 924(c)(1). He pleaded guilty, and judgment was entered on July 10, 2008. On
21 November 21, 2011, Vang filed a petition for writ of habeas corpus pursuant to 28 U.S.C.
22 § 2255, seeking to vacate his sentence.

23 Vang's petition is untimely under 28 U.S.C. § 2255(f) because he filed the petition
24 over one year after judgment was entered. See *U.S. v. Speelman*, 431 F.3d 1226, 1230 (9th
25 Cir. 2005). It can be denied on that basis alone.

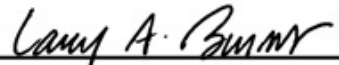
26 Even if Vang's petition were timely, it fails on the merits. In a rambling 22 pages, he
27 attempts to claim that the laws under which he was convicted are unconstitutional because
28 they violate the Tenth Amendment, and are not positive law. This argument is frivolous.

1 See *U.S. v. Ernst*, 857 F.Supp.2d 1098, 1104 (D. Or. 2012) (holding 21 U.S.C. § 841(a)(1)
2 does not violate the Tenth Amendment because it “falls within one of Congress’s
3 enumerated powers”); *Segarra v. U.S.*, Case No. 11-CV-2596-T-24-MAP, 2012 WL 515932
4 at *1 (M.D. Fla. Feb. 16, 2012) (rejecting petitioner’s argument that 18 U.S.C. § 924 violates
5 the Tenth Amendment).

6 Vang’s § 2255 petition is therefore **DENIED**.

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8 **IT IS SO ORDERED.**

9 DATED: April 12, 2013

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11 **HONORABLE LARRY ALAN BURNS**
12 United States District Judge
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